



# Air Resources Board



**Matthew Rodriguez**  
*Secretary for  
Environmental Protection*

**Mary D. Nichols, Chair**  
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**Edmund G. Brown Jr.**  
*Governor*

March 2, 2017

Mr. Stan Muraoka, AICP  
Contra Costa County Department of  
Conservation and Development  
30 Muir Road  
Martinez, California 94553

Dear Mr. Muraoka:

Thank you for providing the Air Resources Board (ARB) the opportunity to comment on the Proposed Mitigated Negative Declaration (MND) and Initial Study (IS) for the 225,950 Square Foot Warehouse Structure, 4000 Evora Road, Bay Point, County File #LP16-2031 (Project). The proposed Project consists of construction and operation of a 225,950 square foot, 42 foot tall, warehouse building and associated infrastructure on a 15.42-acre site.

Based on our review of the IS/MND, ARB disagrees with the findings of the MND, and believes the proposed Project may have significant and unmitigated impacts, individually and cumulatively, due to resulting construction and operational (increased truck traffic) air quality emissions impacts as well as a failure to quantify and estimate GHG emissions. This analysis should be conducted in an environmental impact report.

The proposed Project site is currently vacant land, surrounded by primarily commercial and industrial businesses, undeveloped agricultural land and public roads. Features of the proposed Project include 238 employee/visitor parking stalls, 44 truck loading bays, 11 trailer storage stalls and 28 bicycle stalls. Two miles south of the proposed Project is a large residential development situated along highway 4 in the City of Concord.

The Contra Costa County Department of Conservation and Development (Lead Agency) has prepared an IS/MND to assess the proposed Project's potential effects on the environment and an appraisal of the significance of those effects. Based on the IS/MND, the Lead Agency has determined that the proposed Project will not cause significant effects on the environment after implementation of their mitigation measures.

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.*

California Environmental Protection Agency

The adequacy of an IS/MND is reviewed under the “fair argument” standard. Under this standard, a negative declaration is invalid if there is substantial evidence in the record supporting a fair argument that a project may have a significant effect on the environment. (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4<sup>th</sup> 1359, 1399).

An IS/MND is also invalid if the agency fails to undertake a fact-based investigation of a project’s potential environmental impacts. The California Environmental Quality Act (CEQA) places the burden of environmental investigation on the public agency rather than on the public. If an agency fails to fully evaluate a project’s environmental consequences, it cannot support a decision to adopt a negative declaration by asserting that the record contains no substantial evidence of a significant adverse environmental impact. (See *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.)

If an agency has failed to study a potential environmental impact, a reviewing court may find the existence of a fair argument of a significant impact based on limited facts in the record that might otherwise not be sufficient to support a fair argument of a significant impact. (See, e.g., *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.) In this case, the IS/MND contains no information regarding this project’s potential air quality emissions, instead relying on a “screening” threshold to avoid this analysis. Similarly, it does not quantify the project’s greenhouse gas (GHG) emissions. Without these analyses, it is impossible to understand the project’s air quality and GHG impacts.

Finally, compliance with a screening threshold is not in itself conclusive regarding the presence or absence of significant environmental effects. Rather, compliance with a threshold “means the effect *normally* will be determined to be less than significant.” (CEQA Guidelines § 15064.7(a).) In this case, the IS/MND simply considers the construction and operational air quality impacts by comparing the project square footage against the screening criteria from the Bay Area Air Quality Management District’s (BAAQMD) 2010 Air Quality/CEQA Guidelines. According to the BAAQMD website, these thresholds are currently under judicial review, and cannot not be relied upon without substantial evidence set forth in the record as to why it is appropriate to rely upon these thresholds. Please see the BAAQMD’s website for more information at <http://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/updated-ceqa-guidelines>.

The latest health science tells us that we must be even more vigilant to protect children, who experience higher doses and are more sensitive to air pollution than previously understood. Additionally, unplanned air releases from leaks and emergencies at industrial facilities have raised concern about heightened exposure to surrounding communities.

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Please include ARB on your State Clearinghouse list of selected State agencies that will receive future CEQA documents as part of the comment period. If you have questions, please contact Robbie Morris, Air Pollution Specialist, at (916) 322-0006 or via email at [Robbie.Morris@arb.ca.gov](mailto:Robbie.Morris@arb.ca.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Elizabeth Yura" with a stylized flourish at the end.

Elizabeth Yura, Chief  
Emission Assessment Branch  
Transportation and Toxics Division

cc: State Clearinghouse  
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